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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,511	01/16/2001	Takayuki Hisanaka	2309/01158	5640

7590 08/24/2007
DARBY & DARBY P.C.
805 Third Avenue
new York, NY 10022

EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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08/24/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary

Application No.

09/761,511

Applicant(s)

HISANAKA, TAKAYUKI

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-11,16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-11,16 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 5 June 2007 have been fully considered but they are not persuasive.

In response to the applicant's argument that Ehrnsperger does not explicitly disclose an embodiment comprising both the topsheet coated with a lotion and the waste passage member, it is noted that Ehrnsperger discloses a diaper, and further discloses the preferred embodiment of the diaper having a waste passage member, as described in column 10, lines 25-27. The disclosure of Ehrnsperger in column 6, lines 64-67, of a diaper having a topsheet coated with a lotion is a disclosure of a diaper suitable for the preferred embodiment of Ehrnsperger's invention, which is a diaper comprising a waste passage member. The diaper disclose by Ehrnsperger having a lotioned topsheet is not an embodiment separate from the embodiment comprising the waste passage member, but rather a suitable diaper for use with the waste passage member.

In response to the applicant's argument that the barrier material 68 of Ehrnsperger is located between the topsheet and the soluble material 66, it is noted that Ehrnsperger discloses in column 10, lines 54-60, that the barrier material 68 is not a require element. Ehrnsperger further discloses that the barrier material may be included in the soluble material, as described in column 11, lines 5-14, and therefore the soluble material 66 of Ehrnsperger would be coated directly on the topsheet, with no barrier material forming a layer therebetween.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 7-8, 10-11, and 16-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Ehrnsperger et al. (6,160,200).

With respect to claims 1-3 and 10, Ehrnsperger discloses an absorbent article 20 comprising a liquid pervious topsheet 24, a backsheet 26, and an absorbent core 26, as shown in figures 1-6. A skin-protective ingredient containing layer is applied to the upper surface of the topsheet 24, as disclosed in column 6, line 64-column 7, line 17, in a predetermined pattern. The skin-protective ingredient is fully capable of forming an oily film on the skin of a wearer. A support layer 66 is formed over the skin protective ingredient containing layer, as disclosed in column 17, lines 59-62, and covers substantially the entire article, as disclosed in column 11, lines 3-5. The support layer 66 is soluble in water at and above 25 degrees Celsius, as disclosed in column 10, lines 36-53 and column 13, lines 1-23. It is the examiner's position that since the support layer is soluble in water, at 100% humidity, the support layer is therefore promoted at 100% humidity, which is greater than 30% humidity. The support layer 66 comprises polyvinyl alcohol, as disclosed in column 11, lines 38-41. The support layer 66 is

therefore capable of exposing the skin protective ingredient containing layer to the skin of a wearer after dissolving.

With respect to claim 7, the absorbent article 20, as shown in figure 2, further comprises a leak-preventive cuff and a leg cuff, as disclosed in column 9, lines 49-50 and column 17, lines 18-55.

With respect to claim 8, the support layer 66 further comprises a body adhering composition formed of a polyethylene oxide, as disclosed in column 15, lines 58-67.

With respect to claim 11, the article further comprises leak-preventive cuffs 32.

With respect to claims 16 and 17, the skin-protective ingredient containing layer is located on the topsheet 24 of the article, which fits around the wearer's thighs and abdominal region.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehrnsperger et al. (6,160,200) as applied to claim 1 above, and further in view of Roe et al. (5,607,760).

Ehrnsperger discloses all aspects of the claimed invention but remains silent as to the composition of the skin-protective ingredient. Ehrnsperger discloses in column 7,

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lines 2-5, the skin-care ingredient comprises the lotion described in U.S. Patent No. 5,607,760 to Roe et al.

Roe discloses in column 10, lines 5-10, the skin-protective ingredient containing layer comprises liquid at 35 degrees Celsius. Roe further discloses in column 15, lines 55-56, petroleum jelly. The skin-protective ingredient of Roe reduces adherence of waste to the wearer and improves skin softness, as disclosed in column 3, lines 3-9.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the lotion taught by Roe as the skin-protective ingredient of Ehrnsperger, to reduce adherence of waste to the wearer and improve skin softness.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

UNA

cla

August 17, 2007


PATRICIA BIANCO
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8/20/07